



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
---------------	-------------	----------------------	---------------------

07/264,126 10/24/52 NOBENZUCH

L. 54924

ZANGLI, J. M.

EXAMINER

2340/8837

LEVY, S. V. & FAY, J.
ATTN: JOHN H. CONKLIN
TWO PRESIDENTIAL PLAZA, SUITE 4500
1500 NORTH STELSON
CHICAGO, IL 60601-6700

2304

ART UNIT

PAPER NUMBER

27/E

DATE MAILED:

08/27/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 8/4/93 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice re Patent Drawing, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, Form PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☒ Ex Amendment; PTO-413

Part II SUMMARY OF ACTION

1. ☒ Claims 1-4, 6-15, 18, 24, 27-29, 33, 35-37 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☒ Claims 20-23, 34 have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-4, 6-15, 18, 24, 27-29, 33, 35-37 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Serial Number: 07/964126

-2-

Art Unit: 2304

Part III DETAILED ACTION

1. This is responsive to applicant's communication received on August 4, 1993. The amendment after final has been entered. Claims 1-4, 6-15, 18, 24, 27-29, 33, and 35-37 are pending.
2. During a telephone interview with John Conklin on August 23, 1993, changes to the above entered amendment were discussed to overcome minor 112/2 deficiencies in the hope of placing the case in a condition for allowance (note attached Examiner's Amendment incorporating the agreed to changes).
3. In preparing the case for issue, it was discovered that the terminal disclaimer filed in the parent application, S.N. 07/351179, was worded such that it did not apply to any subsequently filed applications claiming benefit under 35 U.S.C. § 120.
4. Therefore, the final rejection has been withdrawn and the rejection under obviousness-type double patenting is reapplied here.
5. Claims 1-4, 6-15, 18, 24, 27-29, 33, and 35-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-94 of U.S. Patent No. 4,839,835. Although the conflicting claims are not identical, they are not patentably distinct from each other because each provides a means for providing loading information of material loaded into and out of a body and means for

Serial Number: 07/964126

-3-

Art Unit: 2304

processing the information, relative to the movement of the body, to generate an historical database.

6. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. In re Vogel, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

7. Upon receipt and approval of the new terminal disclaimer, this application can be placed in a condition for allowance.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Zanelli whose telephone number is (703) 305-9756.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

Fax communications can be received at (703) 305-9564, 9565. It is suggested that examiner be informed prior to transmission.

/mjz
8/27/93


MICHAEL ZANELLI
PATENT EXAMINER
ART UNIT 234



VINCENT N. TRANS
PRIMARY EXAMINER
GROUP 2300